

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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NINO MONTANO,

Plaintiff,

v.

JOHN THALGOTT,

Defendant.

Case No. 2:22-CV-01458-ART-BNW

ORDER

Pro se Plaintiff Nino Montano (“Montano”) initiated this lawsuit on September 8, 2022 alleging a negligence action against his former surgeon, John Thalgott. Before the Court is the Report and Recommendation (“R&R” or “Recommendation”) of United States Magistrate Judge Brenda Weksler (ECF No. 3), recommending this case be dismissed for lack of subject matter jurisdiction. Plaintiff had until September 28, 2022 to file an objection. To date, no objection to the R&R has been filed. For this reason, and as explained below, the Court adopts the R&R, and will dismiss Montano’s Complaint with prejudice for lack of subject matter jurisdiction.

The Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party fails to object to a magistrate judge’s recommendation, the Court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) (“De novo review of the magistrate judges’ findings and recommendations is required if, but *only* if, one or both parties file objections to the findings and recommendations.”) (emphasis in original); Fed. R. Civ. P. 72, Advisory Committee Notes (1983) (providing that

1 the Court “need only satisfy itself that there is no clear error on the face of the
2 record in order to accept the recommendation.”).

3 Because there is no objection, the Court need not conduct de novo review,
4 and is satisfied Judge Weksler did not clearly err. Here, Judge Weksler
5 recommends dismissing Montano’s Complaint for lack of subject matter
6 jurisdiction. (ECF No. 3 at 2-3). There is no federal jurisdiction as Montano did
7 not assert a claim arising under federal law. There is no diversity jurisdiction as
8 Montano and Defendant Thalgott are both citizens of the state of Nevada.
9 Therefore, this Court lacks subject matter jurisdiction over this case. The Court
10 agrees with Judge Weksler. Having reviewed the R&R and the record in this case,
11 the Court will adopt the R&R in full.

12 It is therefore ordered that Judge Weksler’s Report and Recommendation
13 (ECF No. 3) is accepted and adopted in full.

14 It is further ordered that Montano’s complaint is DISMISSED WITH
15 PREJUDICE.

16 The Clerk of Court is directed to close this case.

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18 DATED THIS 28th Day of October 2022.

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21 ANNE R. TRAUM
22 UNITED STATES DISTRICT JUDGE
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